

OPEN RECORDS AND MEETINGS OPINION
2004-O-02

DATE ISSUED: January 13, 2004

ISSUED TO: Renville County Commissioners

CITIZEN'S REQUEST FOR OPINION

This office received a timely request from Mary A. Marmon for an opinion under N.D.C.C. § 44-04-21.1 asking whether the Board of Renville County Commissioners (Board) violated N.D.C.C. § 44-04-20 by not noticing an October 20, 2003, meeting of the Board.

FACTS PRESENTED

According to the Renville County deputy auditor/treasurer, the county commissioners met at the Renville County Courthouse on October 20, 2003, to attend a mandatory training session for a county risk management program required by Workforce Safety and Insurance. The employee assistance program, a topic normally covered in its training sessions, was also discussed. The Renville County auditor is the Risk Management Coordinator and is in charge of the training program. The county did not notice the training session or take minutes of it because it did not consider the training session to be a "meeting" subject to the open meetings laws.

ISSUE

Whether the Board violated N.D.C.C. § 44-04-20 by not giving notice of the training session.

ANALYSIS

Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity. N.D.C.C. § 44-04-20(1). "Meeting" is defined as "a formal or informal gathering, whether in person or through other means such as telephone or video conference, of . . . [a] quorum of the members of the governing body of a public entity

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regarding public business” N.D.C.C. § 44-04-17.1(8)(a). “Public business” under the open meetings law “means all matters that relate or may foreseeably relate in any way to . . . [t]he performance of the public entity’s governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or . . . [t]he public entity’s use of public funds.” N.D.C.C. § 44-04-17.1(11) (emphasis added).

The definitions of “meeting” and “public business” are broad. This office has previously determined that gatherings of governing board members are meetings “even when no motions are made and no action is taken.” N.D.A.G. 98-O-16. Thus, an on-site inspection by a quorum of a water resource district board of an area that was the subject of a complaint was found to be a meeting. N.D.A.G. 98-F-16. Attendance of a quorum of city council members at the meeting of another public entity to hear presentations by sanitation companies was deemed a meeting because the city council’s sanitation contract was about to expire. N.D.A.G. 98-O-18. Receiving information regarding public business at a gathering of a quorum of a board is a meeting. N.D.A.G. 98-O-11. See also N.D.A.G. 98-F-16 (“meeting” covers all stages of the decision-making process, including information gathering); N.D.A.G. 98-O-08 (public business includes all stages of the decision-making process from information gathering to final action).

The issue here is whether the training session pertained to “public business” and therefore constituted a “meeting” subject to the open meetings laws. The training primarily related to risk management, the purpose of which is to prevent or reduce potential liability of the county. The training is provided to the county commissioners, in part, to help them make decisions that are influenced by considerations of potential liability to the county. It seems reasonable that the risk management training “may foreseeably relate in any way to . . . the performance of the public entity’s governmental functions . . .” N.D.C.C. § 44-04-17.1(11). The receipt of information, or information-gathering regarding public business must be done in an open meeting. N.D.A.G. 96-F-09, N.D.A.G. 98-O-11. Thus, it is my opinion that the gathering of the commissioners for Workforce Safety and Insurance training pertained to “public business” and was therefore a “meeting.” While some may question whether a “training” session should be considered a meeting, there is little room, based on the definition of “public business,” to conclude otherwise. The determination of what constitutes “public business” is a matter best left to the Legislature.

CONCLUSION

It is my opinion the Board violated N.D.C.C. § 44-04-20 by not giving proper notice of the training session.

Notice of the October 20, 2003, meeting needs to be prepared specifying that minutes of that meeting will be available upon request. The notice must be posted in the county’s

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main office, filed with the county auditor, and a copy must be given to the county's official newspaper and to Mary Marmon. Also, minutes of the meeting need to be prepared that indicate the training covered in the meeting.

Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2. N.D.C.C. §44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

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